

ST 96-33

Tax Type: SALES TAX

Issue: Disallowed Resale Deduction (No Valid Certificates)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket #
v.)	IBT #
)	NTL #
TAXPAYER)	
)	William J. Hogan
Taxpayer)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS

TAXPAYER (hereinafter "Taxpayer") is a small steel fabrication business. The Illinois Department of Revenue (hereinafter "Department") audited the taxpayer for the period of January 1, 1988 through December 31, 1990. At issue is whether a crossover walkway, fabricated and installed at the CUSTOMER plant in Nashville, Illinois, is exempt from Retailers' Occupation Tax pursuant to the manufacturing machinery and equipment provision of the statute at issue (35 ILCS 120/1). It is recommended the assessment be finalized.

FINDINGS OF FACT

1. Department's *prima facie* case, inclusive of all jurisdictional elements was established by the admission into evidence of the Correction of Returns, showing total liability due and owing of \$6,095.00. \$5,450.00 was paid and agreed. \$645 was not paid and is the subject of the instant protest. (Dept. Ex. No. 6)

2. The taxpayer is located in Mt. Vernon, Illinois. (Dept. Ex. No. 1)

3. The taxpayer protested an assessment on a crossover walkway fabricated for a customer, CUSTOMER, of Nashville, Illinois. (Tr. p. 8)

4. The crossover walkway the taxpayer also refers to as a catwalk. Specifically, it is a catwalk to a conveyor system so that the taxpayer could move its supplies and parts to the conveyor. (Tr. p. 18)

5. The taxpayer had three billings during the audit period to CUSTOMER, Inc. One of the billings was for seven carts the taxpayer made and sold and received a Manufacturing Machinery and Equipment Exemption from tax (Tr. pp. 11 and 12). The second billing was not identified nor disputed by the taxpayer (Tr. p. 12). The third billing was for the crossover walk and did not receive a Manufacturing Machinery and Equipment Exemption from the Department's auditor.

6. The crossover walkway was built at the taxpayer's plant in Mt. Vernon and put together at the customer's location in Nashville. While the taxpayer acted as a retailer of fabricated metal products; in this transaction the taxpayer affixed the crossover, and thus acted as a construction contractor. (Tr. pp. 7 and 11)

7. The customer, CUSTOMER, Inc. manufactures car parts. (Tr. p. 17)

8. The taxpayer constructed a catwalk to the conveyor system so that supplies could be moved to the conveyor. (Tr. p. 18)

9. The crossover/walkway is synonymous with a floor affixed conveyor, except that the crossover/walkway is overhead and not under foot.

10. A review of the of the record, finds that the crossover/catwalk is not an item directly involved in the manufacturing of an item for sale. The record does not reflect the fact that the subject item is involved in manufacturing. Moving parts and supplies into production is clearly outside of the purview of the manufacturing or assembling of the manufacturing or assembling which is contemplated as exempt in the applicable statute. The manufacturing begins once all parts and supplies reach the production cycle where the parts are changed into a different form or use.

11. The taxpayer agreed that since it was located in Mt. Vernon and the crosswalk was placed in Nashville an Enterprise Zone Tax exemption was not applicable. (Tr. p. 22 and see Finding of Fact No. 2.)

CONCLUSIONS OF LAW

The catwalk must qualify for the Manufacturing Machinery and Equipment Exemption in the Retailers' Occupation Tax Act (35 ILCS 120/1 et seq.) The pertinent administrative regulation promulgated thereunder excludes the following from the exemption at 86 Ill. Adm. Code 130.330 (4)(c) "....The use of machinery or equipment to store, convey, handle or transport materials or parts to sub-assemblies prior to their entrance into the production cycle."

Furthermore , "A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract." (86 Ill. Adm. Code 1940). The taxpayer is taxes on the price of the incorporated personalty. (See also 86 Ill. Adm. Code 130.2075.)

Therefore, the crosswalk does not qualify for tax exemption. As an aside, Finding of Fact number eight stipulates that the legal criteria for an enterprise zone exemption does not apply. Further, the cited administrative regulation, both as a matter of fact and a statement of law, precludes the application of the Manufacturing Machinery and Equipment Exemption, because the crossover walkway is equipment used prior to the production and manufacturing of tangible personal property.

RECOMMENDATION

It is recommended that Notice of Tax Liability No. XXXXX be finalized as issued.

William J. Hogan
Administrative Law Judge